

ORAL ARGUMENT HELD DECEMBER 6, 2024

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

)	
WEST VIRGINIA, et al.,)	
)	
Petitioners,)	
)	
v.)	No. 24-1120
)	(and consolidated cases)
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Respondents.)	
)	

EPA’S STATUS REPORT

Pursuant to this Court’s order of April 25, 2025, Respondents Environmental Protection Agency (EPA), et al., hereby advise the Court of this matter’s status:

1. Petitioners seek review of an EPA rule titled “New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule,” 89 Fed. Reg. 39798 (May 9, 2024).
2. Oral argument was held on December 6, 2024.

3. On April 21, 2025, Respondents filed an unopposed motion to hold this case in abeyance while EPA conducts a rulemaking to reassess the challenged rule, with status reports due every 90 days. Document #2111915. The Court granted Respondents' motion. Document #2113035.

4. On June 11, 2025, EPA issued a notice of proposed rulemaking reassessing the challenged rule, titled "Repeal of Greenhouse Gas Emissions Standards for Fossil Fuel-Fired Electric Generating Units," 90 Fed. Reg. 25752 (June 17, 2025).

5. EPA held a public hearing on the proposed rule on July 8, 2025. *See id.* at 25752. In addition, EPA solicited public comment on the proposed rule through August 7, 2025. EPA received over 125,000 comments. *See* <https://www.regulations.gov/docket/EPA-HQ-OAR-2025-0124>.

6. Under the Court's order holding the case in abeyance, EPA was required to file a status report by October 22, 2025. However, at the end of the day on September 30, 2025, the appropriations act that had been funding the Department of Justice and most other Executive agencies expired, so EPA moved for an extension of its status-report

deadline. Document #2140627. The Court granted the motion, ordering EPA to file the next status report within 10 days of the date that appropriations are restored and the Department of Justice attorneys are permitted to resume their usual civil litigation functions. Document #2141826.

7. On November 12, 2025, appropriations were restored to the Department of Justice. EPA's status report is therefore due today, November 24, 2025.

8. EPA's rulemaking process is ongoing, and the Agency continues to both analyze and gather information from a variety of sources. EPA initially expected to take final action on the proposed rule in December 2025. Document #2127045. Considering the lapse in appropriations and the press of other obligations, EPA is in the process of revising its expected timeline. EPA will provide a further update on February 23, 2026, when its next status report is due.

Respectfully submitted,

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/s/ Elliot Higgins
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing filing have been served through the Court's CM/ECF system on all registered counsel this 24th day of November, 2025.

/s/ *Elliot Higgins*
ELLIOT HIGGINS